

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JOSEPH ALLEN) No.
)
Plaintiff,)
) COMPLAINT
v.)
)
JEFF NELSON and the martial community) JURY TRIAL DEMANDED
thereof, and AUBURN POLICE)
DEPARTMENT AND THE CITY OF)
AUBURN.)
)
Defendants.)

I. INTRODUCTION

On August 23, 2018, Officer Jeff Nelson, while on duty and driving his marked patrol vehicle saw Joseph Allen, (“Plaintiff”), and accelerated his vehicle, heading towards Mr. Allen and hit and rammed Mr. Allen directly with his vehicle. Officer Nelson had Mr. Allen pinned against a fence and was crushing Joseph Allen against the fence with his vehicle. Mr. Allen suffered extreme physical and emotional pain, including having both of his ankles broken from

1 this horrific incident. Joseph Allen continues to experience significant pain and disability as a
2 direct result of the Defendant's actions.

3 2. Joseph Allen brings this action seeking justice, accountability, and damages from
4 Defendants. Joseph Allen seeks damages to compensate him for the harm that is a direct and
5 proximate result of the Defendant's unreasonable and deliberate indifferent actions to him that
6 caused his great and severe pain as well as psychological and mental harm he has suffered from
7 the Defendants behavior actions and inactions. This is a civil rights action brought by Plaintiff
8 pursuant to 42 U.S.C § 1983 and the Fourth and Fourteenth Amendments against the Defendants
9 and their martial community. This case arises from the claims of excessive force, unlawful
10 seizure, tort of outrage, negligence and violation of RCW 49.60.

11 3. Joseph Allen was unlawfully run down by an Auburn police vehicle, that broke both of
12 Joseph's ankles, that was driven by Auburn police officer Jeff Nelson.

13 4. As a result of his injuries, Plaintiff Allen has impairment in the use of his feet, was
14 required to have multiple surgeries on his ankles, including doctors inserting metal implants into
15 his ankles. Allen experienced several physical, mental and emotional injuries from this incident
16 as a result of Jeff Nelson's actions.

17 5. Defendant City of Auburn ("City") is responsible for the actions and activities of employees
18 of the Auburn Police Department when Auburn Police Department employees are acting within the
19 course and scope of their employment. In addition to killing three people on three separate
20 occasions while employed as an Auburn Police Officer, Officer Jeff Nelson has a remarkably
21 high number of use of force incidents. The City of Auburn continues to employ Officer Nelson.
22 Despite Officer Nelson's conduct, the City of Auburn County has approved and ratified the
23 Defendant officers' actions. That is because those actions were consistent with Auburn Police
24 Department and the City of Auburn policy, and they occurred because of the City of Auburn's

1 failure to adequately train, supervise, and discipline its deputies. The City of Auburn implicitly
2 and overtly condones and defends officers that hurt unarmed individuals, and at times kills them.
3 Further, City of Auburn repeatedly fails to discipline deputies who commit acts of excessive
4 force especially when it involves the use of deadly force. Auburn Police Officers are aware that
5 they are unlikely to receive any discipline from the City when they use deadly force against a
6 human being. The systemic failures of the Auburn Police Department, including but not limited
7 to those areas addressed above, resulted in an unnecessary and unlawfully excessive use of force
8 which has left Joseph Allen in his current physical condition, with both ankles broken, in
9 constant physical pain and mentally and emotionally devastated. The City of Auburn and its
10 police department were deliberately indifferent to the constitutional rights of Joseph Allen by
11 failing to adequately train its officers, and/or are believed to have express policies, and/or are
12 believed to have widespread practices which encouraged and enabled the use deadly force in an
13 unconstitutional manner that jeopardizes the safety of all citizens. As a result, City of Auburn is
14 liable for the violation of Joseph's constitutional rights, and the damages he suffered, as well.

15 II. PARTIES

16 6. Plaintiff Joseph Allen was a resident of King County, Washington at all times relevant to
17 this action.

18 7. Defendants Jeff Nelson. At all times relevant Jeff Nelson was employed as a law
19 enforcement officer by the Auburn Police Department for the Auburn, Washington and was acting
20 within the course and scope of his employment with the City of Auburn and under color of law. All
21 of Jeff Nelson's acts alleged here were taken for the benefit for the City of Auburn and his martial
22 community.

1 8. Officer Nelson has shot and killed three people during his tenure as an Auburn Police
2 Officer. Officer Nelson is currently charged with Murder in the second degree for the killing of
3 Jesse Sarey.

4 9. Defendant City of Auburn is a Washington municipal entity with police powers existing
5 pursuant to the Washington State Constitution and the Constitution of the United States. Defendant
6 City of Auburn (“City”) is responsible for formulating and implementing the actions and activities
7 of employees of the Auburn Police Department’s policies and procedures and ensuring its officers
8 are properly and adequately trained and acting within the course and scope of their employment.
9 Auburn Police Officers are aware that they are unlikely to receive any discipline from the City
10 when they use deadly force against a human being.

11 12 **III. JURISDICTION AND VENUE**

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14 10. Venue is proper in King County under RCW 4.12.020.

15 11. Jurisdiction is proper under RCW 4.96.010 and RCW 4.96.020. A City of Auburn claim
16 for damages was presented to the City of Auburn, City Clerk’s Office as directed on the tort
17 claim. On or about April 27, 2021, Plaintiff provided the City with notice of his tort claims
18 pursuant to R.C.W. 4.96.020. More than sixty (60) calendar days have elapsed since the filing of
19 the tort claim form such that filing of this action is allowed pursuant to RCW 4.96.020
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IV. JURY DEMAND

12. Plaintiff hereby demands a jury trial on the causes of action set forth herein.

IV. FACTS

13. On August 23, 2018, Joseph Allen suffered a traumatic and horrible thing. While at the Walmart parking lot in Federal Way, Joseph was aggressively run down by Officer Nelson in his marked patrol vehicle. Officer Nelson saw Joseph Allen and accelerated his vehicle, heading towards Mr. Allen and hit and rammed Mr. Allen directly with his vehicle. Officer Nelson had Mr. Allen pinned against a fence and was crushing Joseph Allen against the fence with his vehicle. Mr. Allen suffered extreme physical and emotional pain, including having both of his ankles broken from this horrific incident. This incident occurred in the parking lot thoroughly humiliating Joseph in a public forum. This degrading tactic was then spread among the public furthering Joseph's humiliation because it was done in front of other individuals.

14. Mr. Allen was startled, confused, and bewildered at what was occurring. He was looking for a safe place and saw a vehicle chasing him down. He was in fear for his life and believed that officer was going to kill him with his vehicle.

15. Officer Jeff Nelson approached Joseph Allen forcefully when he hit and pinned Mr. Allen with his vehicle.

16. Officer Jeff Nelson was crushing Mr. Allen with his vehicle and ended up breaking both of Mr. Allen's ankles from this incident. Mr. Allen immediately experienced significant pain.

17. Officer Nelson's aggressive actions caused significant injury to Mr. Allen's ankles and had a significant impact on Mr. Allen's ability to do the things he traditionally enjoyed doing.

1 The actions of Officer Nelson also impacted Mr. Allen's ability to find work in the future.

2 Further, Mr. Allen continues to experience significant pain and suffering as a direct result of
3 Officer Nelson's actions.

4 18. Mr. Allen was embarrassed and humiliated by the actions of the Officer Nelson during
5 this incident. Further, he experienced significant physical and emotional pain as a result of
6 Officer Nelson's actions.

7 19. Mr. Allen is African American.

8 20. Defendant Jeff Nelson's acts were unreasonable, negligent, and reckless; he failed to
9 follow accepted police practices; and he unreasonably escalated the likelihood that the encounter
10 would result in a use of unnecessary force.

11 21. Joseph Allen did not make any verbal or physical threats toward Defendant Jeff Nelson.

12 22. Joseph Allen did not attempt to make physical contact with Defendant Jeff Nelson.

13 23. Joseph Allen did not touch Defendant Officer Nelson.

14 24. At the time that Defendant Officer Nelson ran down Joseph Allen with his vehicle,
15 Joseph was unarmed.

16 25. At the time that Defendant Officer Nelson pinned down Joseph Allen with his vehicle,
17 Joseph was NOT a danger to Officer Nelson or others.

18 26. City of Auburn was deliberately indifferent to the fact that its inadequate and reckless
19 policies, procedures, customs and supervision would be the moving force behind its officers
20 using unnecessary and unreasonable force.

21 27. Upon information and belief, none of the Defendants were subject to any discipline as a
22 result of their role in causing harm and damages to Joseph Allen, which was unjustified and
23 unnecessary and/or the violations of policy and reckless actions described above.

28. The City of Auburn's ratification of this type of behavior continues, and its ratification and its failure to take corrective action reflects its deliberate indifference to the danger of constitutional violations and physical harm its policies and practices create.

29. Upon information and belief, City of Auburn has not implemented any changes that would fix the flaws in the policies and customs described above. City of Auburn's policymakers' refusal to scrutinize the behavior and contrast that to the physical evidence is part and parcel of the City's continued deliberate indifference to the risks created by its inadequate training, supervision, and discipline of officers who use excessive force or foreseeably create situations likely to lead to great bodily harm, injury, or even death.

VI. CAUSES OF ACTION

30. Plaintiff re-alleges the paragraphs set forth above.

Unconstitutional Use of Excessive Force by Defendant Jeff Nelson (Against all Defendants)

31. First Cause of Action. The Defendants are liable to the plaintiff for the tort of excessive force.

32. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures of the person. This protects citizens and members of the community and prohibits the government from using excessive force against those citizens. The shooting of an allegedly fleeing suspect constitutes a Fourth Amendment "seizure." The Fourteenth Amendment of the U.S. Constitution applies the Fourth Amendment's provisions against state and local actors.

33. At all material times, Officer Nelson operated under color of law.

34. Officer Nelson violated the Fourth Amendment's clearly established prohibitions against excessive force when he employed the use of deadly force against Joseph Allen for failing to yield or failing to obey instructions without any objectively reasonable belief that Allen posed an

1 immediate threat of harm to himself or others. Joseph Allen was unarmed and was not suspected
2 of a violent criminal offense. Moreover, Allen was on foot and out of the path of police officers
3 but was nonetheless run and chased down by Officer Nelson, who pinned Allen with his patrol
4 vehicle, which was on top of Allen's ankles.

5 35. As a direct and proximate result of these constitutional violations, Allen was seriously and
6 perhaps permanently injured, and continues to suffer, experiencing substantial physical, mental
7 and emotional pain, anguish and anxiety.

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10 **Violation of Constitutional Rights City of Auburn Monell Claim**

11 37. Second Cause of Action. Plaintiff re-alleges the paragraphs set forth above against the
12 City of Auburn for the violation of his Constitutional Rights. (Against City of Auburn/ Monell
13 claim)

14 38. Plaintiffs re-allege the paragraphs set forth above.

15 39. Defendants have a duty to use reasonable care in hiring, training and supervising
16 employees and agents.

17 40 Defendants breached this duty in a negligent and grossly negligent manner. As a
18 proximate result of Defendants' breach, Joseph Allen is severely injured and continues to suffer,
19 experiencing substantial physical, mental and emotional pain, anguish and anxiety

20 **Unconstitutional and Unlawful Seizure (Against All Defendants)**

21 41. Third Cause of Action. The Defendants are liable to the plaintiff for unlawful seizure.
22 (Against All Defendants)

23 42. Plaintiff re-alleges the paragraphs set forth above.

43. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures of the person. This protects citizens and members of the community and prohibits the government from using excessive force against those citizens. The shooting of a fleeing suspect constitutes a Fourth Amendment “seizure.” The Fourteenth Amendment of the U.S. Constitution applies the Fourth Amendment's provisions against state and local actors.

44. Officer Nelson violated the Fourth Amendment’s clearly established prohibitions against excessive force when he employed the use of deadly force against Joseph Allen for failing to yield or failing to obey instructions without any objectively reasonable belief that Allen posed an immediate threat of harm to himself or others. Joseph Allen was unarmed and was not suspected of a violent criminal offense. Moreover, Allen was on foot and out of the path of police officers but was nonetheless run and chased down by Officer Nelson who pinned Allen with his patrol vehicle, which was on top of Allen’s ankles.

45. As a direct and proximate result of these constitutional violations, Allen was seriously and perhaps permanently injured, and continues to suffer, experiencing substantial physical, mental and emotional pain, anguish and anxiety.

Tort of Outrage (Against All Defendants)

46. Fourth Cause of Action. The Defendants are liable to the plaintiff for the tort of outrage (Against all Defendants)

47. Plaintiff re-alleges the paragraphs set forth above.

48. All the defendants are liable to all plaintiffs for the tort of outrage. Plaintiff is bringing his claim of outrage based the fact that Defendants’ actions were extreme and outrageous conduct, Defendants’ actions caused reckless infliction of emotional distress, and the Defendants’ actions did cause severe emotional distress to the Plaintiff.

Negligence (Against all Defendants)

49. Fifth Cause of Action. The Defendants are liable to the plaintiff for Negligence (Against All Defendants).

50. Plaintiff re-alleges the paragraphs set forth above.

51. At all times material herein, Defendant City of Auburn was responsible for the actions of its agents and employees under the theory of *respondeat superior*.

52. At all times material herein, Defendant City of Auburn, through its employees, including the named individual defendant Jeff Nelson and the officers who engaged in a police pursuit of Joseph Allen, owed a duty to use reasonable care with regard to its attempts to take Joseph Allen into police custody.

53. At all times material herein, Defendant City of Auburn, through its employees, including the named individual defendant Jeff Nelson and the officers who engaged in a police pursuit of Joseph Allen, violated that duty through the following activities, including but not limited to, engaging in a police pursuit against policy, chasing down and using a vehicle as a weapon to pin down an unarmed individual, and using the vehicle as a weapon to break the ankles of Joseph Allen.

54. Defendants breached this duty in a negligent and grossly negligent manner. As a proximate result of Defendants' breach, Joseph Allen is severely injured and continues to suffer, experiencing substantial physical, mental and emotional pain, anguish and anxiety.

Violation of RCW 49.60 (Against All Defendants)

55. Fifth Cause of Action. Per RCW 49.60.030 The Defendants are liable to the plaintiff for violation of the plaintiff's civil rights to the right to be free from discrimination because of

1 race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual
2 orientation, or the presence of any sensory, mental, or physical disability or the use of a
3 trained dog guide or service animal by a person with a disability is recognized as and declared to
4 be a civil right.

5 56. Plaintiff re-alleges the paragraphs set forth above.

6 57. Plaintiff is an African American who was in a public area. Officer Jeff Nelson is Caucasian.
7 Plaintiff believes he was discriminated against and treated differently because of his race. As a
8 result of Defendants' actions and conduct it discriminated against Joseph Allen based on his
9 race.

10 11 12 13 **VII. PRAYER FOR RELIEF**

14 Plaintiffs respectfully prays for judgment as follows:

15 1. Awarding general, special and punitive damages, including damages for pain and
16 suffering and loss of consortium pursuant to 42 U.S.C. §§ 1983 and 1988, in an amount to be
17 proven at trial;

18 2. Awarding costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, or as
19 otherwise available under the law;

20 3. General and special damages as allowed by Washington law, including but not
21 limited to economic and non-economic injuries in an amount to be proven at trial;

22 4. Awarding any and all applicable interest on the judgment; and

23 5. Awarding such other and further relief as the Court deems just and proper.
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1 DATED this 16th day of August, 2021.

2
3 /s/ James Bible
4 James Bible, WSBA #33985
5 Attorney for Plaintiffs

6 /s/ Jesse Valdez
7 Jesse Valdez, WSBA #35378
8 Co-Counsel Attorney for Plaintiffs

9 /s/ Errin Loyal
10 Errin Loyal, WSBA #56672
11 Co-Counsel Attorney for Plaintiffs
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